

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II,
New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 21/2017
Date of Passing Award- 18.04.2023

Between:

Sh. Rahmat Khan S/o Mohd. Shaffi,
& 17 Ors, R/o H.No. A-1296,
Durga Gali, Mandwali, Delhi-110092

Workman

Versus

1. The Handicrafts and Handlooms Exports Corp.
India, A unit of Govt. India,
O/o Jawahar Vyapar Bhawan, Annex-1,
Tolstoy Marg, New Delhi-110001
2. M/s Clothes Channel, 393, Sector-29,
Noida, Distt. Gautam Budh Nagar,
Gautam Buddh Nagar (UP)

Managements

Appearances:-

Shri Ajit Singh Ld. A/R for the claimant.

None for the Management.

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of (i) The Handicrafts and Handlooms Exports Corp. India, A unit of Govt. India, (ii) M/s Clothes Channel, 393, Sector-29, Noida, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42012/12/2017-(IR(DU)) dated 05/06/2017 to this tribunal for adjudication to the following effect.

“Whether the workmen i.e. Sh. Rahmat Khan
S/o Mohd. Shaffi and 17 others whose details are

enclosed herewith in annexure HHEC are entitled for re-instatement against the management of the Handicrafts and Handlooms Export Corporation of India as Tailor with all consequential benefits? If not, then, what relief the workmen are entitled to?"

As stated in the claim petition, the claimants who are 18 in No were working in the establishment of Management no 1 as it's permanent employee since the date mentioned in the claim petition as tailors. Though they were working for management No 1 with all sincerity and honesty, the later was not extending the legal and legitimate service benefits to them. The management No 1 was not paying them the minimum wage as notified from time to time by the Govt. the claimants were often raising the issue and demanding the legal benefits from the said employer. Being aggrieved, the management No 1 made a statement that the claimants are not the employees of HHE C but the employees of the contractor M/S Cloth Channel. But there never existed employer employee relationship between the said contractor and the workmen. Any contract , if any, between the Management No 1 and Mgt No 2 is sham and intended to camouflage the legal rights of the claimants. The claimants had earlier raised a dispute before the appropriate authority claiming minimum wage and an order was passed by the said authority in favour of the claimants.

Suddenly, the management no 1 stopped giving work to the claimants w. e. f.01.09.1991 and thereby terminated their service without notice and without following the procedure laid down under the ID Act. On 04.03.1991, the claimants served a demand notice on management no 1. But the same was not replied. A dispute was raised before the Labour commissioner Ghaziabad and the effort for conciliation failed. Hence an Industrial Dispute was raised by these workmen before the Labour Court Ghaziabad and the learned Labour Court had passed an award in favour of the claimants on 16.08.2010 directing reinstatement with full back wages.

The Respondent No 1 challenged the said order before the Hon'ble High Court of Allahabad. There, the management never came up with clean hand. However it agreed to pay the minimum wage as notified by the Govt. thereafter the Management continued to pay a consolidated sum of Rs 1500/- per month to each of the claimants as their wage until the dispute was finally decided by the

Hon'ble H C of Allahabad by order dt 22.08.2016.theHon'ble H C of Allahabad in their final order came to hold that the Labour Court Ghaziabad lacks jurisdiction to decide the dispute and thereby set aside the impugned Award. Hence the reference was again made to this Tribunal for adjudication. The claimants have further stated that the Hon'ble HC while taking note of the fact that the claimants are unemployed since 26 years directed for expeditious disposal of the reference.

The other stand as per the claim statement is that the claimants were the employees of Management NO 1 and working under it's direct control and supervision it was paying remuneration to them and each claimant had worked for the Management no 1 for more than 10 years before their services were terminated .hence an award be passed in their favour directing the management to reinstate them in service with full back wages.

The Management No 1 appeared in response to the notice and filed WS denying all the stand taken by the claimants. Amongst others it has been pleaded that the present proceeding is hit under the principle of Resjudicata as the Hon'ble HC of Allahabad have already decided the employer and employee relationship between the parties and the said judgment has attained finality not being challenged in any other higher forum. Besides that it has been pleaded that the claimants were employed by the contractor Respondent No 2 , who was awarded a contract for some work and for execution of the said work, the claimant workmen might have been engaged. The said contractor, Respondent No 2 is a registered firm and besides paying remuneration to the claimants, it was also making contribution to EPF and ESI in respect of these workmen and making necessary deduction from their wage. The workmen of this proceeding had never worked for more than 240 days in a calendar year under the employment of the Respondent No 1. Hence their prayer for grant of temporary status and reinstatement in to service is untenable under law. The claim is liable to be dismissed being barred by limitation too.

In the rejoinder filed the claimants have denied the stand of the Respondent no 1 with regard to limitation and Resjudicata. It has been stated that the claim was raised before the Labour Court Ghaziabad and an award was passed in favour of these workmen. But the Respondent challenged the jurisdiction of the Labour Court

Ghaziabad and the Hon'ble HC of Allahabad disposed of the WPC giving liberty of raising the dispute in the appropriate forum. Hence the proceeding is not barred by limitation. It has also been stated that the Hon'ble HC of Allahabad have not expressed any view on the merit of the matter nor have decided any issue of controversy. Hence the principle of Resjudicata does not apply to this proceeding.

On these rival pleadings the issues were framed as under by order dt 19/02/2018.

ISSUES

- 1- Whether the claim is not legally tenable in view of the various preliminary objections.
- 2- In terms of reference.

The workmen adduced evidence by examining 17 witnesses who are the claimants of this proceeding. Except witness No 1 the Respondent No 1 did not cross examine the other witnesses and did not appear during the dates of the proceeding, hence the cross examination of the witnesses were marked as nil by Respondent No 1 and the claimants closed their evidence. The respondent No 2i.e the Cloth channel did not appear in this proceeding and by order dt 18/01/2019, the said Respondent was proceeded ex parte.

Findings

Issue no 1

The contesting respondent while filing WS has challenged the maintainability of the proceeding mainly on two grounds i.e the proceeding is barred by limitation and the same is hit under the principle of Resjudicata as the Hon'ble HC of Allahabad have already decided the relationship of the parties ab\nd their claim. As stated above no evidence has been adduced in this proceeding by the Respondent No 1. The judgment of the Hon'ble HC of Allahabad dt 22/08/2016, passed in Writ case No 28105/2011 has been placed on record by the parties. On a careful reading of the said judgment, it appears that the order of the Labour Court Ghaziabad was set aside on the ground of want of jurisdiction only and liberty was granted to the claimants for raising the dispute before the appropriate forum. The Hon'ble Court have not decided the issues involved in the proceeding. Hence it can not be held that the present proceeding is barred under the principle of Resjudicata.

So far as the objection relating to limitation is concerned, it is found from record that from the date of their termination, the claimants are fighting the litigation before the Labour court Ghaziabad and before the Hon'ble HC of Allahabad. The Hon'ble court set aside the award passed by the Labour Court and liberty being granted the present dispute has been referred by the appropriate Govt. to this Tribunal. The Hon'ble HC have clearly observed that 26 years have passed in the meantime and the claimants are pursuing their cause which needs early disposal. For the said observation of the Hon'ble Court and for the on going litigations, it is held that the proceeding is not barred by limitation and the objection raised by the Respondent is rejected. This issue is accordingly decided in favour of the claimants.

Issue No 2

The claimant no1 i.e. Rehamat Khan testified as WW1 and produced a No of documents marked in the series of WW1/1 to WW1/8. Another claimant Bindan Singh also testified as WW2. He , besidesrelying upon the documents filed by WW1 proved his bank pass book to prove that he was getting remuneration from the Respondent 1. These two witnesses were cross examined by the Respondent No 1. All other claimants examined as witnesses were not cross examined and their evidence stands un rebutted and un challenged. The witnesses examined have stated in clear terms that they were employed by the management No 1 and getting remuneration directly from the said management. However, the management was not paying them appropriate wage and not extending the statutory benefits. Though the respondent has taken a stand that the claimants were engaged by Respondent No2 , who was awarded a contract for execution of specific work and the contractor being their employer was paying them wage and making statutory deductions, no evidence to prove the said stand has been adduced by the management. Neither the copy of the agreement nor the documents relating to payment made by the Respondent No 1 to Respondent No 2 towards the wage of these claimants has been placed on record. On the contrary the documents filed by the claimants which include their Bank pass book and attendance register clearly prove that the claimants from the first date of their engagement and till the date of their termination were working under the establishment of Respondent No 1 under the supervision and control of it's officers and had discharged the duty continuously for more that 240 days in a calendar year. But Respondent Management No 1 terminated their services illegally

w. e. f. 01.09.1991. at the time of such termination as admitted by the Respondent no notice of termination, notice pay or termination compensation was paid as provided u/s 25 F of the ID Act. It is a fact noticeable that the claimants are litigating for the injustice meted to them in one forum or other and more than 30 years have passed in the mean time. The claimants who had appeared before this Tribunal were all found to be old and already attained the age of superannuation. The termination of their service is held at the instance of Respondent No 1 as no contrary evidence than adduced by the claimants is available on record. Hence it is concluded that no order of reinstatement with back wages c can be passed in the circumstances. The claimants are held entitled to a certain amount of compensation which would serve the ends of justice. This issue is accordingly decided in favour of the claimants. Hence ordered.

ORDER

The reference be and the same is answered in favour of the claimants. It is held that the claimants were engaged for work by the Respondent No 1 on different dates as mentioned in the list annexed to this order. But their services were illegally terminated by Respondent No 1 w. e. f. 01.09.1991. more than 31 years have passed in the meantime. In view of the circumstances, it is felt proper to allow them to get an amount of compensation instead of a direction for re instatement with back wages. Accordingly the respondent No 1 i.e Handicrafts & Handloom Export Corporation of India shall pay a lump sum amount of Rs 5,00,000/-(five lakh) to each of the claimants within 60 days from the publication of the Award failing which the amount as directed shall carry interest @6% per annum from the date of this award and till the final payment is made.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
18th April, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
18th April, 2023.